

GUIDELINES FOR PAYMENT OF COURT-APPOINTED COUNSEL

[Bus. & Prof. Code, § 6007(b)(3);
Rule 422, Rules Proc. of State Bar]

The right of respondents to representation by appointed counsel in proceedings pursuant to Business and Professions Code section 6007(b)(3) and the right of appointed counsel to payment for such representation is governed by rule 422 of the Rules of Procedure of the State Bar. Rule 422 provides, in pertinent part, as follows:

"(a) No later than the issuance of the notice to show cause why the member should not be transferred to inactive enrollment under Business and Professions Code section 6007(b)(3), the member shall be represented by counsel. If the member is not so represented, the Court shall appoint counsel without expense to the member. *Appointed counsel shall be compensated by order of the Court for reasonable expenses, and for reasonable fees for matters before the Court or seeking review from the California Supreme Court of a decision of the Review Department ordering or upholding an order of inactive enrollment, at any hourly rate fixed by the Executive Committee. The reasonableness of counsel's fees and expenses shall be determined by the Court.*" (Italics added.)

The Executive Committee of the State Bar Court has established the rate of compensation at \$75.00 per billable hour and has adopted the following guidelines for payment of appointed counsel pursuant to rule 422 of the Rules of Procedure of the State Bar.

Frequency of Billing

Requests for compensation shall be submitted on a form approved by the State Bar Court Executive Committee.

Appointed counsel shall submit detailed and itemized bills for their services for the following three separate stages of the proceeding:

1. **Initial Claim:** For services performed from date of appointment through completion of the pre-trial conference.
2. **Interim Claim:** For services performed from the conclusion of the pre-trial conference to date of filing of the hearing judge's decision.
3. **Final Claim:** For services performed following filing of the hearing judge's decision to finality of the proceeding in the State Bar Court.

Prima Facie Allowances

In order to provide court-appointed counsel with guidance for the billing of services performed, the State Bar Court Executive Committee has established "prima facie allowances" for specified services. The State Bar Court presumes that appointed counsel will expend a certain amount of time for each service performed on behalf of the respondent and that the prima facie allowance is a reasonable amount. However, claims are to be submitted for the time **actually** expended; therefore, if less time is expended than is allowed under the prima facie allowance, only the time actually spent may be billed.

While claims in excess of the prima facie allowance are not prohibited, appointed counsel must explain why additional time was necessary and why the amount claimed is reasonable under the circumstances. The judge to whom the claim is submitted may grant or deny in whole or in part any claim in excess of the prima facie allowance.

Appointed counsel has a duty to adequately represent his/her client, whether or not counsel is fully compensated for such representation. Therefore, for instance, while the prima facie allowance for client conferences may be 5.0 hours, the attorney must adequately communicate with the client (Bus. & Prof. Code § 6068(m); rule 3-500, Rules Prof. Cond. of State Bar), even if he/she is not fully compensated for the time expended for such communication.

Following is an itemization of various services that are normally performed by appointed counsel in a proceeding for involuntary inactive enrollment pursuant to Business and Professions Code section 6007(b)(3) and the prima facie allowances applicable for such services:

<u>Service</u>	<u>Prima Facie Allowance</u>
Review Notice to Show Cause	1.0 hours
Communications with Client	5.0 hours
Propound/Respond to Discovery	7.5 hours
Participate in Status Conferences	
In Person	1.0 hours
Telephonic	.5 hours
Prepare Pre-Trial Conference Statement	5.0 hours
Attend Pre-Trial Conference	actual court time
Attend Settlement Conference	actual court time
Preparation of Stipulation	1.0 hours

<u>Service</u>	<u>Prima Facie Allowance</u>
Trial Preparation	8.0 hours
Trial	actual court time
Post-Trial Briefs	
Opening Brief	10.0 hours
Review Opposing Brief	2.0 hours
Reply Brief	5.0 hours
Motion for Reconsideration	3.0 hours
Request for Review	1.0 hours
Briefs of Review	
Opening Brief	12.0 hours

Review Opposing Brief	2.0 hours
Reply Brief	5.0 hours
Oral Argument/Preparation	4.0 hours

Other Claimed Expenses

In addition to the above-referenced prima facie allowances, the State Bar Court Executive Committee recognizes that additional expenditures of funds may be necessary. Such expenditures will be reimbursed, when accompanied by the appropriate documentation, as follows:

1. **Depositions:** The hearing judge will determine in status conferences whether depositions are necessary. Reimbursement for depositions will include the court reporter appearance fee, if any, and payment for a non-expedited copy of the reporter's transcript.
2. **Medical/Psychiatric Examination:** If a medical, psychiatric or psychological examination of the respondent is ordered by the Court and/or the testimony of a psychiatrist or psychologist is required at trial, the psychiatrist or psychologist will be compensated by the Court at the rates established by the State Bar Court Executive Committee.
3. **Photocopies/Duplication Services:** Actual cost, not to exceed \$.10 per page.
4. **Postage:** Actual cost.
5. **Travel:** Counsel will **not** be reimbursed for "normal" travel, e.g., travel to and from the State Bar Court for conferences, trial and oral argument. Any extraordinary travel shall be raised with the hearing judge at a status conference and approved in advance. Where travel is approved, compensation will be at the State Bar rate (i.e., \$.30 per mile). **Time** spent in travel will not be compensated.
6. **Paralegals/Law Clerks:** The services of paralegals or law clerks will be reimbursed only if approved by the hearing judge in advance, in writing. Compensation for the services of paralegals and law clerks shall not exceed \$25.00 per billable hour.
7. **Other Expenses:** All other expenses must be approved in writing, in advance, by the judge assigned to the proceeding.